

TESTIMONY OF MARSHALL JONES, ACTING DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS HEARING ON THE NEED TO AMEND THE MARINE MAMMAL PROTECTION ACT AND IMPLEMENTATION OF THE 1994 AMENDMENTS TO THE STATUTE.

October 11, 2001

Mr. Chairman, I am grateful for the opportunity to provide testimony on the Marine Mammal Protection Act (MMPA or Act) of 1972 and implementation issues related to the recently negotiated U.S. - Russia agreement on polar bear conservation.

The MMPA establishes a federal responsibility, shared by the Secretaries of the Interior and Commerce, for the management and conservation of marine mammals. The Secretary of the Interior, through the U.S. Fish and Wildlife Service (Service), protects and manages polar bears, sea and marine otters, walruses, three species of manatees, and dugong. As the Subcommittee is aware, the MMPA is currently due to be reauthorized. While the Administration is in the early stages of its review of the Act, the Department has been working diligently with the National Marine Fisheries Service (NMFS), the Marine Mammal Commission, the Navy, Alaska Natives and others to identify areas of the Act that might benefit from well-considered changes.

Mr. Chairman, you asked the Administration to discuss whether any changes are needed to the Act at this time. The Administration does believe that the Act can be improved upon in a way that will enhance the conservation of marine mammals, improve implementation of the Act generally, and strengthen relationships with our non-federal partners. However, as noted above, because the Administration has not yet completed its review of the Act, my testimony today necessarily must focus only on the types of changes that have been under consideration, and not on specific recommendations. I will also provide the Subcommittee information on areas where we have made significant progress in implementing the 1994 amendments beyond that reported to the Subcommittee at hearings on June 29, 1999 (regarding implementation of the 1994 amendments), and on April 6, 2000 (regarding implementation of Section 119 of the MMPA).

Section 119

Currently, Section 119 of the MMPA authorizes the Secretaries of the Interior and Commerce to enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals taken for subsistence and handicraft purposes. Marine mammals are a vitally important cultural and subsistence resource for Alaska Natives, and are visible indicators of changes in the marine environment. Given the size and remoteness of the marine systems in Alaska, monitoring the health and status of marine mammal populations, discussed briefly later in this testimony, is a highly challenging endeavor. Alaska Natives, as subsistence users, are often first to note changes in marine mammals that are important to assessing conditions in the marine environment. Section 119 recognizes these connections, and allows their potential benefits to be realized by providing a mechanism to access information available only to Native Alaskans.

Current Section 119 -- Successes and Limitations

Under this section and the existing cooperative agreements that it authorizes, the Administration works with

its Native partners to develop management strategies that are implemented through existing authorities, such as tribal ordinances. The Administration believes that these cooperative agreements have been a positive addition to the Act. However, the conservation benefits provided by these management strategies are limited for several reasons. They are strictly voluntary endeavors carried out on a village-by-village basis, with further limitations related to the varying levels of compliance.

From a conservation standpoint, actively managing the harvest of marine mammal stocks is the best way to ensure their continued health. Currently, this is not possible because the MMPA does not allow subsistence harvests of marine mammal stocks to be managed unless those stocks are designated as depleted under the Act. The current lack of management measures on non-depleted stocks of marine mammals can lead to sharp declines in those stocks. Both the Department and our Alaska Native partners agree that it is essential that sound management of marine mammal harvests occur prior to depletion, in order to avoid depletion.

Last year, before this Subcommittee, the Department discussed the benefits of Section 119 and progress made in working with its Native partners in a number of areas. At that time, Chairman Young challenged those directly involved in marine mammal management in Alaska to develop a proposal supporting management of subsistence harvest by Alaska Natives. We have been working hard with our federal and non-federal partners to meet that challenge.

In this vein, a proposal has been considered by this group that would provide a mechanism for Alaska Native Organizations to initiate the development of co-management agreements containing management restrictions, related to subsistence harvest, which would be administered by either the tribal or federal signatories to the agreement. Under this proposal, violations of the terms of the agreement, or of tribal ordinances enacted pursuant to the agreement, would be violations of the Act.

Implementation of Section 119

The Service currently has three cooperative agreements in place: (1) for sea otters, with the Alaska Sea Otter and Steller Sea Lion Commission; (2) for polar bears, with the Alaska Nanuuq Commission; and (3) for Pacific walrus, with the Eskimo Walrus Commission. These agreements have been in place since 1997 and provide a contractual framework for accomplishing specific activities, which are detailed through "scopes-of-work" attached to the cooperative agreement. Agreements are reviewed and implemented annually. A basic benefit of these agreements and the resources they provide is improved communication not only between the Commissions and ourselves, but also among the Commission members and hunters.

Both the Alaska Sea Otter and Steller Sea Lion Commission and the Service emphasize involving local Native organizations in the management of activities that affect sea otters throughout the State of Alaska. Such efforts include: development of local sea otter management plans; collection of traditional knowledge regarding sea otter distribution and abundance; and projects to assess local sea otter population status and health. Small boat surveys, conducted by local residents in their areas on an annual basis and following protocols developed in cooperation with the Service, have the potential to provide an important long-term data base for tracking population trends. In addition, the surveys provide a mechanism for incorporating local, traditional knowledge. This past year, funding through Section 119 also supported participation of the Commission in an international workshop on sea otters that focused in part on the ongoing decline of sea otters in the Aleutians.

The Alaska Nanuuq Commission (ANC) was formed in 1994 to represent Alaska Native hunters from 16 coastal communities in Alaska on polar bear matters. Our cooperative agreement with the ANC supports

polar bear conservation through the direct involvement of subsistence users. A highlight of our work with the ANC has been its support in developing the bilateral agreement with Russia on the conservation of the Alaska-Chukotka polar bear population. The ANC coordinated meetings, conducted negotiations, and is developing a Native-to-Native agreement with Russia's Chukotka Natives to assist in implementing the agreement between countries. Another accomplishment of working with the ANC has been the expansion of the effort to study and compile traditional ecological knowledge of polar bear habitat use to include Chukotka, Russia. This expanded effort is being conducted in partnership with the National Park Service. An upcoming project for the ANC is a planned workshop to provide technical assistance to representatives from Chukotka to develop a harvest monitoring program in Chukotka.

Our agreements with the Eskimo Walrus Commission (EWC) relating to Pacific walrus support communications with village hunters, provide assistance with biological and contaminant monitoring, and promote sustainable harvest and conservation actions. An accomplishment of our partnership is the collection of information on Russian harvest of a shared U.S. - Russian population of walrus. The data collection effort began two years ago with the training of Russian harvest monitors in an Alaskan village during the Russian Spring harvest. We now have two years of Russian harvest data and an expanding program in Chukotka that provides important information on this shared population. Another focus of the EWC is to expand the harvest monitoring program in Alaska. To achieve this, joint efforts have been undertaken to include additional villages in the collection of specific harvest information and biological samples.

In sum, Mr. Chairman, while improvements to Section 119 have been discussed, that section does provide substantial benefits for marine mammal conservation, in addition to helping us forge and strengthen essential relationships with our Alaska Native partners. We believe Section 119 should be retained, even in the event that legislation relating to co-management is ultimately enacted. This would allow continued authorization of cooperative research and monitoring activities related to subsistence use even when the parties desire something less than full "co-management" of a marine mammal stock.

Monitoring Marine Mammal Populations

As I have mentioned, one of the benefits provided by Section 119 is the ability for the Service to access data collected by Alaska Natives. This data is used as a compliment to that collected by the Service through its own programs. The Service uses a variety of approaches to monitor populations of sea otter, polar bear, and Pacific walrus in Alaska. Sea otters are most commonly censused using aerial and shipboard surveys. The advantage of aerial surveys is the ability to cover vast distances in a relatively short period of time. Shipboard surveys are generally less expensive than aerial surveys, and are typically used to monitor population trends in specific areas. Polar bear populations are monitored by aerial surveys and mark-recapture methods. In recent years, the Service has conducted surveys of polar bears in the southern Beaufort sea using helicopters flown from the deck of a Coast Guard icebreaker. Staff of the U.S. Geological Survey, Biological Resources Division have an ongoing mark-recapture study of polar bear populations with over 20 years of data.

The Pacific walrus population is perhaps the least studied of the Service's trust species of marine mammals. The last range-wide aerial survey of walrus was conducted in 1990, and as a result, the current population size is unknown. The aerial survey technique used at that time is generally considered to be inadequate for detecting population trends, and the Service is in the process of developing better survey methods for Pacific walrus. In the absence of range-wide population surveys, the Service monitors the walrus population by recording the numbers of male walrus that come ashore at several locations in Bristol Bay, Alaska. While

this is not an estimate of the overall walrus population, biologists believe that it is a useful index of population trends.

In addition to monitoring the status and trend of the living population, the Service also records the number of marine mammals removed for subsistence purposes. In 1988, the Service initiated the Marine Mammal Marking, Tagging, and Reporting Program (MTRP). The program requires Alaska Natives to present the hide and skull of sea otters and polar bears, or the tusks of the Pacific walrus to a Service representative within 30 days of harvest. The representative attaches permanent tags to the specified items, and records basic biological information about the animal such as age class and gender. The MTRP currently has taggers in over 100 villages throughout coastal Alaska. The MTRP database contains records for 1,000 polar bears, 8,000 sea otters, and 20,000 walrus harvested by Alaska Natives. In addition to the MTRP, the Service also conducts an additional program to monitor the annual spring harvest of Pacific walrus in selected villages in the Bering sea. The Walrus Harvest Monitor Project collects basic harvest information and sample materials such as teeth for age determination and female reproductive tracts for life history analysis.

Export Prohibition

One of the 1994 amendments to the MMPA added to Section 102 a prohibition on exporting marine mammals. At that time, certain provisions of Section 104 of the Act, which authorizes the issuance of permits for various activities, were amended to reflect the new prohibition on exports. However, other appropriate corresponding changes were inadvertently not made in the Act. This has resulted in confusion for the regulated public. For example, Section 101(a)(6), also added in 1994, authorizes Native inhabitants of Russia, Canada, and Greenland to import marine mammal products into the United States in conjunction with personal travel. However, Section 101(a)(6) neglects to address the export of those imported products at the termination of the travel within the U.S. Similarly, the export prohibition added uncertainty as to whether handicrafts made and sold by Alaska Natives under Section 101(b) may be exported from the United States. The implementing agencies have been considering ways to clarify these ambiguities.

Southern Sea Otter - Fishery Interaction Data

Mr. Chairman, you requested that we provide testimony on the management of southern sea otters. This testimony will be presented later today by a different Service witness as part of the panel on California issues. However, I do want to briefly touch on one issue related to southern sea otters.

Pursuant to Section 118 of the Act, the Department is interested in gathering information on fishery interactions with southern sea otters. It is known that southern sea otters are incidentally taken in fishing operations. MMPA reauthorization may provide an opportunity to enhance efforts to assess the impact of commercial fisheries on this threatened sea otter population.

Polar Bear Trophy Permits

In 1994, Congress added a provision to the Act that allows the issuance of permits for the importation of certain trophies of sport-hunted polar bears. These trophies must be taken legally in Canada, and from populations for which certain findings have been made. The 1994 amendments specified that applications for such permits do not require review by the Marine Mammal Commission. However, the application process does require that public notice be given prior to, and after, issuance or denial of the permits.

In recent years, the Service has processed more than 100 applications annually for sport-hunted polar bear

trophy importation permits. Although notice of each application has been published in the *Federal Register*, we have not received any public comments responding to these notices. MMPA reauthorization might provide an opportunity to streamline this process. One possible approach would be to consolidate the public notice requirement to a semi-annual listing in the *Federal Register*. Such an approach would also have an additional benefit of reducing administrative expenses associated with the public notice requirement.

Research Grants

The Administration also continues to be interested in the potential for research grants as described in Section 110(a). For example, one change to this provision that might be considered is a clarification that research grants authorized under this provision may be targeted at plant or animal community-level problems.

Community-level research could prove especially important in light of the significant, but poorly understood, environmental changes occurring off Alaska in the Bering Sea and Chukchi Sea regions. These environmental changes, which include rapid and extensive sea ice retreat, extreme weather events, and diminished benthic productivity, could have widespread effects. There is a pressing need to monitor the health and stability of these marine communities, and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of these communities. Because residents of these regions largely depend upon marine resources for their livelihoods, research on subsistence uses of such resources, and providing ways for the continuation of such uses, should be integral parts of the effort to study these communities.

Similarly, there is concern over possible widespread changes to the California coastal marine community. These changes may be adversely affecting prospects for recovery of the threatened southern sea otter population. This community would similarly benefit from a system-wide study.

Definition of Harassment

Finally, the participating agencies have been looking at ways that the definition of the term "harassment," found in Section 3(18)(A) of the Act, can be clarified. The provision, added to the Act as part of the 1994 amendments, is viewed by some as ambiguous and confusing. Many also believe that it could be amended to provide greater notice and predictability to the regulated community and to improve the ability of federal agencies to enforce the prohibition on harassment, while continuing to protect marine mammals in the wild.

U.S. - Russia Polar Bear Agreement

Lastly, amendments to Section 113(d) enacted in 1994 authorized the Service, for the United States, to enter into negotiations with Russia to enhance the conservation and management of polar bear stocks. We have acted on this authorization. Since 1990, the Service has worked to improve cooperative research and management programs with Russia for the conservation of polar bears. Significant progress has been made in this effort. Building on this progress, United States and Russian representatives negotiated a bilateral agreement on the conservation and management of the shared Chukchi/Bering Seas polar bear population in February 1998. That agreement was signed by the two nations in Washington, D.C., on October 16, 2000.

The purpose of the Polar Bear Agreement is to ensure long-term, science based conservation of the Alaska-Chukotka polar bear population. A particular concern addressed by the agreement is the widely different harvest provisions and practices of the U.S. and Russia. Unknown (but potentially significant) levels of

illegal harvest are occurring in Chukotka. While lawful harvest by Alaska Natives for subsistence purposes occurs in Alaska, as discussed above, United States law does not allow restrictions of this harvest unless a polar bear population becomes "depleted" under the MMPA. The Russian Federation will soon open a lawful polar bear hunting opportunity for the subsistence purposes of native Chukotkans. When this happens, there will be an immediate, pressing need for the coordination of harvest restrictions on both sides of the border to prevent an unsustainable combined harvest that could lead to the Alaska-Chukotka polar bear population becoming depleted under the MMPA and threatened or endangered under the Endangered Species Act. The Agreement will create a management framework to prevent this from happening.

In order for the Agreement to be implemented a number of steps still need to be taken: submission of the Agreement to the United States Senate by the Administration; ratification of the Agreement by the Senate; enactment of necessary implementing legislation and promulgation of regulations.

The Administration is also developing draft legislation to implement the Agreement; that legislation is currently undergoing review. The draft legislation will be consistent with, and will carry forward the spirit and stated intent of, the 1973 multi-lateral Agreement on the Conservation of Polar Bears, as well as domestic legislation. Of course, before any legislation is put forward, both it and any proposed amendments to the MMPA will undergo review by all federal agencies, including Department of Justice, who will review the package for legal sufficiency. The Agreement and the draft implementing legislation represent a major step forward for polar bear conservation, and enhance our collaborative efforts with Russia to conserve shared natural resources. The Administration looks forward to working with the Subcommittee to ensure introduction and passage of this legislation.

Conclusion

Mr. Chairman, in closing, I would like to state that this Administration is committed to conserving and managing marine mammals by working with our partners in a cooperative fashion. In particular, I want to emphasize the commitment to continued collaboration with our Alaska Native partners to further enhance their role in the conservation and management of marine mammals. We believe we can be more effective at addressing our responsibilities in marine mammal conservation, and look forward to working with you and members of the Subcommittee and full Committee to enact meaningful improvements to the Act during this Congress.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions.